1949. K File No. O. Pre. & Corruption/49 (Sanction Orders)

Legal & DEPARTMENT

A BRANCH

K

Subject:— & Sanction Orders given under the Bombay Prevention of Corruption Act, 1947.

P.65/B

File No. O. Pre. & Corruption/49 (Sanction Orders) 347-A

Std. Sectt. Slip 24 B 9.

C O N T E N T S.

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BKS. 4/6/ 5c.

Office of the Controller of Accommodation
Bombay, March 1949

WHEREAS in the month of September 1948 Mr.Mahomed Hussein Tajuddin Hamdulay held the post of an Inspector in the office of the Controller of Accommodation, Bombay, and as such was a public servant not removable from his office save by or with the sanction of the Controller of Accommodation;

And WHEREAS on or about the 4th September 1949 the said Mahomed Hussein Tajuddin Hamdulay, while acting or purporting to act in the discharge of his official duties, obtained illegal gratification other than legal remuneration and by abusing his position as a public servant obtained pecuniary advantage, of Rs.100 for himself from one Banwarilal Shamlal Javeri as a motive for reward for accelerating the restoration of his flat at "Chandra Villa" Nehru Road, Vile Parle;

AND WHEREAS it appears to the Controller of Accommodation that the said Mahomed Hussein Tajuddin Hamdulay has thus committed the offences punishable under section 161 of the Indian Penal Code and under section 5(1)(d) of the Prevention of Corruption Act, 1947 (India Act II of 1947);

NOW, THEREFORE, in exercise of the powers conferred by clause (c) of section 6 of the Prevention of Corruption Act, 1947 (India Act II of 1947) the Controller of Accommodation is pleased to grant sanction for the prosecution of the said Mahomed Hussein Tajuddin Hamdulay for the said offence.

Controller of Accommodation.

BKS. 4/6/ 4c.

Office of the R.L.A.

A revised draft sanction is enclosed. The offence under section 5(1)(d) of the Prevention of Corruption Act, 1947, is omitted; for, it is inexpedient to convert this into a sessions trial.

Sd/-P.M.L.
Remembrancer of Legal Affairs.

U.R. to Controller of Accom., No.233-Confl
dated the 9th April 1949.

BKS. 4/6/ 4c.

Office of the R.L.A.

A revised draft of the sanction order is appended. No sanction under section 197 of the Code of Criminal Procedure. is necessary.

Sd/-P.M.L.
21/4
Remembrancer of Legal Affairs.

U.R. to R.D. No. 4473, dated the 23rd April

BKS. 4/6/ 4c.

Mr. Bhiku Rama Bhadvankar,
Officiating Police Patil of Kokare,
Mahal Chandgad, District Belgaum.

GOVERNMENT OF BOMBAY.
Revenue Department,
Resolution No. 267/49,
Bombay Castle, April 1949.

Letter from the Collector of Belgaum, No. WTMSR 2888, dated the 8th March 1949.

RESOLUTION:- Whereas in the year 1947-48, Mr.Bhiku Rama Bhadvankar held the office of the Police Patil of the village Kokare in the Chandgad Mahal of the Belgaum District, and as such, was a public servant not removeable from his office save by or with the sanction of the Government of Bombay;

And whereas while Messrs. V.L.Gavde, L.B. Gavas and Y.V. Gavas of Ishapur were carrying 9 payalis of paddy from Shripadwadi to Ishapur through the limits of Kokare village without a permit, the said Bhiku Rama Bhadvankar being the Police Patil of Kokare and as such being a public servant with the help of one Mr. D.R. Deshpande, having first detained the said three men of Ishapur, allowed them, on or about the 26th September 1947, to transport the said paddy without a permit from one village to another by accepting from them Rs. 25 as gratification, other than legal remuneration, as a motive or reward for allowing the said three men to transport the said paddy without a permit;

And whereas it appears to the Government of Bombay that the said Bhiku Rama Bhadvankar has thereby committed an offence punishable under section 161 of the Indian Penal Code, 1860 (XLV of 1860);

Now, therefore, in exercise of the powers conferred by sub-section (b) of section 6 of the Prevention of Corruption Act (II of 1947), the Government of Bombay is pleased to grant sanction for the prosecution of the said Bhiku Rama Bhadvankar for the said offence.

By order of the Governor of Bombay,

Additional Under Secretary to Government

BKS. 4/6/ 4c.

Office of the R.L.A.

In substance Mr.Shedge can be said to have received illegal gratification although he did so through his friend Achrekar. In order to leave no room for the contention that Mr.Achrekar may have received the money without his knowledge, the words "agreed to accept" have been inserted in the sanction order, as on the point of agreement there can be no dispute about Mr.Shedge's liability.

2. The correct designation of the officer by whom Mr.Shedge was removable may be filled in at the appropriate places.

Sd/-P.M.L.
13/4
Remembrancer of Legal Affairs.

U.R. to C.S.D. No. 4060 , dated the 13th April 1949.

BKS. 4/6/ 4c.

Prosecution.
Mr.Balaram Shripad Shedge,
Assistant Rationing
Inspector,
Sanction of ----

Civil Supplies Department.
Order No.672/Estt.
Bombay Castle, April 1949.

Read letter No.193/ACB of 1949 dated the 21st January 1949 from the Deputy Commissioner of Police, Anti-Corruption Branch, C.I.D., Bombay.

Read letter No.529/ACB of 1949 dated 4th March 1949 from the Deputy Commissioner of Police, Anti-Corruption Branch, C.I.D., Bombay.

ORDER.

Whereas in January 1949 Mr.Balaram Shripad Shedge held the post of Assistant Rationing Inspector at the Byculla Railway Station Kiosk (West) and as such was a public servant removable from his office by ... ...*.....;

* Insert here the correct designation of the officer.

And Whereas one Mr.Khandu Shankar Padre, who had approached the said Mr.Balaram Shripad Shedge on the 19th January 1949 to surrender two ration cards - one of his wife Gitabai and the other of his daughter Babibai-, was suspected of drawing rations illegally on these cards and an inquiry was started in that connection by the said Mr.Balaram Shripad Shedge;

And whereas at the request of the said Mr.Khandu Shankar Padre, the said Mr.Balaram Shripad Shedge agreed not to take any action against Mr.Padre if the latter paid him Rs.40;

And Whereas in pursuance of this agreement, on or about the 20th January 1949 the said Mr.Balaram Shripad Shedge agreed to accept and accepted gratification, other than legal remuneration, of Rs.20 from the said Mr.Khandu Shankar Padre through his friend, one Mr. Digambar Krishnaji Achrekar, as a motive or reward for forbearing to take action against the said Mr. Khandu Shankar Padre for drawing rations illegally on

the said two ration cards;

And Whereas it appears to the .....*..... *Insert here the correct designation of the officer.
....., that the said Mr. Balaram Shripad Shedge has thereby committed an offence punishable under section 161 of the Indian Penal Code;

Now, therefore, in exercise of the powers conferred by clause (c) of section 6 of the Prevention of Corruption Act, 1947 (II of 1947), the .....
.....*..... *Insert here the same designation as above.
grants sanction for the prosecution of the said Mr. Balaram Shripad Shedge for the said offence.

/Insert here the same designation as above. =/

BKS. 4/6/ 4c.

Prosecution.
Mr. Shamrao Madhavrao Patil,
Officiating Mulki Patil of
Karkamb, Taluka Pandharpur,
District Sholapur.

GOVERNMENT OF BOMBAY,
Revenue Department ,
Resolution No.1939/49-M.
Bombay Castle, 1949.

Letter from the District Magistrate, Sholapur, No. VI 2026, dated the 16th June 1949.

Letter from the District Magistrate, Sholapur, No. VI 2664, dated the 6th August 1949.

RESOLUTION.- Whereas in the year 1948 Mr. Shamrao Madhavrao Patil held the office of the Revenue Patil of the village Karkamb in Pandharpur Taluka of the Sholapur District and as such was a public servant not removable from his office save by or with the sanction of the Government of Bombay;

And Whereas in the course of his duties as such Revenue Patil the said Mr. Shamrao Madhavrao Patil discovered that one Mr. Ramling Vishvanath Dudhande of Karkamb had, in constructing his new house in the Mangwadi made encroachment on Government lands and drew up a Panchanama thereof;

And Whereas on or about 1st August 1948 the said Mr.Shamrao Madhavrao Patil accepted gratification of Rs.15 from the said Mr. Ramling Vishvanath Dudhane, other than his legal remuneration, as a motive for showing favour by not taking further action in the matter of that encroachment ;

And Whereas it appears to the Government of Bombay that the said Mr. Shamrao Madhavrao Patil has thereby committed an offence punishable under section 161 of the Indian Penal Code, 1860 (XLV of 1860).

Now, therefore, in exercise of the powers conferred by clause (b) of section 6 of the Prevention of Corruption Act, 1947 (II of 1947), the Government of Bombay is pleased to grant sanction for the prosecution of the said Mr. Shamrao Madhavrao Patil for the said offence.

By order of the Governor of Bombay,

Under Secretary to Government.

BKS. 4/6 / 4c.

Office of the R.L.A.

A revised draft of the sanction order is appended herewith.

Sd/-P.M.L.
6/9
Remembrancer of Legal Affairs.

U.R. to R.D. No. 10151 , dated the 6th September 1949.

BKS. 4/6/ 4c.

PROSECUTION.

Mr. Pandurang Revji Pande.
Officiating Police Patil,
of Jawale-baleshwar,
Tal. Sangamner, Dist. Ahmednagar.

GOVERNMENT OF BOMABY.
Rev. Department.
Resolution No.1727/49.
Bombay Castle, September 1949.

Read:- Letter , No.D.C.W.S.I.- 1152 of 1949, dt. the 24th May, 1949, from the District Magistrate, Ahmednagar.

Government letter No.1727/49-M, dt. the 11th June 1949.

Letter No.D.C.W.S.I-1721/49, dt. the 27th July 1949, from the District Magistrate, Ahmednagar.

RESOLUTION:- Whereas in the year 1947 -48 Mr. Pandurang Revji Pande held the office of the Police Patil of the village Javle-baleshwar in Sangamner Taluka of the Ahmednagar district and as such was a public servant not removable from his office save by or with the sanction of the Government of Bombay;

And whereas, investigations in the case against the said Mr. Pandurang Revji Pande and three others under section 354 of the Indian Penal Code for using criminal force with intent to outrage the modesty of Parvatibai Mahadu Kadam of Javle-baleshwar were in progress,

And whereas while these investigations were in progress, or or about the 10th of January 1948 the said Mr. Pandurang Revji Pande offered a gratification of Rs.50/- to Mr. S.K.Pardeshi, Police Sub Inspector of Sangamner, other than his legal re

showing him a favour in the exercise of his official functions viz. for hushing up the case filed by Parvatibai Mahadu Kadam,

And whereas , it appears to the Government of Bombay that the said Mr. Pandurang Revji Pande has thereby committed an offence punishable under section 161, read with sec. 116 of the I.P.C. 1860 (XLV of 1860);

Now, therefore, in exercise of the powers conferred by clause (b) of sec. 6 of the ~~p~~ Prevention of Corruption Act 1947 (II of 1947), the Government of Bombay is pleased to grant sanction for the prosecution of the said Mr. Pandurang Revji Pande for the said offence.

By order of the Governor of Bombay,

Under Secretary to Government.

Copies to :-

The Commr. C.D. ,

The Collr. of Ahmednagar (with case-papers).

The H.D.,

The L.D.

BKS. 4/6/ 40.

Office of the R.L.A.

A revised draft of the sanction Order is appended herewith.

Sd/-P.N.L.
16/9
Remembrancer of Legal Affairs.

U.R. to R.D. No. 10269 dated the 12th September 1948.

BKS. 4/6/ 4c.

Prosecution.

Mr.Raghavendra Jivanji Desai,
Officiating Kulkarni of
Timakapur , Taluka Hirekerur
(Kod), District Dharwar.

GOVERNMENT OF BOMBAY.
Revenue Department.
Resolution No.1564/49.
Bombay Castle, September 1949.

Read letter No.M.A.G.S.R.2114, dated the 18th May 1949, from the District Magistrate, Dharwar.

Government letter No.1564/49-M, dated the 28th May 1949.

Letter No.MAG.SR.2114 dated the 4th August 1949, from the District Magistrate, Dharwar.

RESOLUTION:- Whereas during the year 1948 Mr. Raghavendra Jivanji Desai held the office of officiating Kulkarni of the village of Timakapur in the Hirekerur (Kod) Taluka of Dharwar district and, as such, was a public servant, not removable from his office save by or with the sanction of the Government of Bombay;

And Whereas, about 8-10 days before the Nagarpanchami holiday in 1948, the said Mr.Raghavendra Jivanji Desai, while acting or purporting to act in the discharge of his official duties, accepted gratification of Rs.50 from one Mr.Tirakappa Ningappa Pujar of Timakapur, other than his legal remuneration as a motive for showing favour to the said Mr.Tirakappa Ningappa Pujar in the exercise of his official functions, namely, for effecting changes ~~xkinx~~ in the record of rights regarding the land which was then in dispute between the said Mr. Tirakappa Ningappa Pujar and his nephew Basawanneppa;

And whereas it appears to the Government of Bombay that the said Mr. Raghavendra Jivanji Desai has thereby committed an offence punishable under section 161 of the Indian Penal Code, 1860 (XLV of 1860);

Now, therefore, in exercise of the powers conferred by clause (b) of section 6 of the Prevention of Corruption Act, 1947 (II of 1947), the Government of Bombay is pleased to grant sanction for the prosecution of the said Mr. Raghvendra Jivanji Desai for the said offence.

By order of the Governor of Bombay,

Deputy Secretary to Government.

BKS. 4/6/ 4c.

Office of the R.L.A.

A revised draft of the sanction Order is appended herewith.

Sd/-P.M.L.
14/9
Remembrancer of Legal Affairs.

U M. to R.D.No. 10480 dated the 16th September 1949.

BKS. 4/6/ 4c.

Office of the R.L.A.

A revised sanction i order is appended.

2. It is presumed that the Additional Under Secretay, Revenue Department, is authorized to authenticate orders.

Sd/-P.M.L.
16/9
Remembrancer of Legal Affairs.

U.R. to R.D., No. 10636 , dated the 20th September 1949.

BKS. 4/6/ 4c

Prosecution.

Mr. Annaraya Rudragouda Patil,
Officiating Police Patil of
Hanjigi, Taluka Indi, District
Bijapur.

GOVERNMENT OF BOMBAY.

Revenue Department.
Resolution No.1706/49.
Bombay Castle, September 1949.

Letter from the District Magistrate, Bijapur, No.M.A.G./Hanjigi, dated 18th April 1949.

Memorandum from the Commissioner, Southern Division, No.M.A.G.223, dated 27th May 1949.

Government letter No.1706/49-M, dated 8th June 1949.

Letter from the Collector and District Magistrate, Bijapur, No.MAM/Hanjigi, dated 17th July 1949.

RESOLUTION:- Whereas during the year 1947, Mr. Annaraya Rudragouda Patil held the office of the police Patil of the village Hanjigi in the Indi Taluka of the Bijapur District, and as such was a public servant not removeable from his office save by or with the sanction of the Government of Bombay;

And whereas on or about the 14th of October 1947, when the second wife of one Mr. Allisab Lalsab Hosmani of Hanjigi met with an accidental death by falling into a well, the said Mr. Annaraya Rudragouda Patil accepted gratification of Rs.135, other than his legal renumeration, from the said Mr. Allisab Halsab Hosmani favour in the exercise of his official functions by granting permission for the burial of the dead body;

And whereas it appears to the Government of Bombay that the said Mr. Annaraya Rudragouda Patil has thereby committed an offence punishable under section 161 of the Indian Penal Code, 1860 (XLV of 1860);

Now, therefore, in exercise of the powers conferred by clause (b) of section 6 of the Prevention of Corruption Act, 1947 (II of 1947), the Government of Bombay is pleased to grant sanction for the prosecution of the said Mr. Annaraya Rudragouda Patil for the said offence.

By order of the Governor of Bombay,
Under
Additional/Secretary to Government.

BKS. 4/6/ 4c.

GOVERNMENT OF BOMBAY. Sanction to prosecute 37

Legal Department.

Circular No. 12511.

Bombay Castle, 31st December 1948.

CIRCULAR.

Various enactments contain a provision that no prosecution shall be instituted without the previous sanction of a particular authority. These enactments do not prescribe a particular form of the sanction and it is noticed that the sanction usually takes the form which merely says that "sanction is given for a breach of a particular provision by a particular person". Such sanction is defective inasmuch as it does not show on its face with reference to what facts the sanction is given. To establish the identity of facts with reference to which the sanction is given and the facts on which the actual prosecution is launched, it thus becomes necessary for the prosecution to lead extraneous evidence, and for various reasons it is not always possible to adduce such evidence. To avoid the necessity of leading extraneous evidence, the Remembrancer of Legal Affairs has been repeatedly advising that the sanction order should contain a statement of facts with reference to which sanction is given. It has, however, been noticed that this advice is not being followed with the result that prosecutions fail for want of proper sanction. This view of the Remembrancer of Legal Affairs has been recently endorsed by the Privy Council in the case of Gokulchand Morarka vs. The King, wherein Sir John Beaumont has observed that "it is plainly desirable that the facts should be referred to on the face of the sanction". All Departments of Government and all officers of Government who may be called upon to give sanction are, therefore, advised that while giving sanction they should invariably embody in the sanction order a statement of the facts to ensure that the prosecution should not fail on the technical ground of the sanction being defective.

By order of the Governor of Bombay,

P. M. LAD,

Secretary to Government.

G. C. No. 12511, L. D., dated 31st December 1948.

To

All Departments of the Secretariat (except the Separate Department), with a request to forward copies to all officers under them,

All Commissioners of Divisions,

The Inspector-General of Police, Bombay, Province, Po

The Commissioner of Police, Bombay,

All District Magistrates,

All Public Prosecutors

Mx No. of 1948.

Copy forwarded for information and guidance to

BKS. 4/6/ 4c.

No. 9263.
Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 16th August 1949.

Three model forms of sanction under section 197 of the Criminal Procedure ~~Code~~ Code, 1898, and sections 5(b) and 6(c) of the Prevention of Corruption Act, 1947 are forwarded herewith. The Departments are requested to use these forms whenever occasion arises, taking care to see that a statement of facts on which the prosecution is to be based is embodied in the Sanction Order (vide Legal Department Circular No. 12511, dated the 31 st December 1948). Such sanction Orders need not hence-forward be referred to the Remembrancer of Legal Affairs for scrutiny, unless there is any particular point involved on which Remembrancer of Legal Affairs' opinion is considered necessary.

2. It may be pointed out that in view of the recent decisions of the Privy Council in Gill Vs. the King (75 I. A. 41) and Meogy Vs. the King (76 I.A. 10) no sanction under section 197 of the Code of Criminal Procedure would be necessary for the prosecution of a public servant for acts which he could not justify as acts done by him by virtue of his office. Thus no sanction under section 197 of the Code would be necessary for prosecuting a public servant for an offence under section 161 of the Indian Penal Code.

P.M. LAD.
Remembrancer of Legal Affairs.

To

All Department of the Secretariat,
(Except the Separate Department).
All Heads of Departments in the Province.

BKS. 4/6/ 4c.

Form No. I (Sanction under S. 197, Criminal Procedure Code)

Prosecution.

Mr.....

.....of.....,Taluka.....

District .....

GOVERNMENT OF BOMBAY.
Department,
Resolution No.
Bombay Castle, 1919.

[Letter from the Collector of .....No .....
dated the .....19.....]

RESOLUTION. Whereas in the year .....Mr.....
.....held the office of .....of.....
in the .....Taluka of the .....District and as such was a public servant not removable from his office save by or with the sanction of the Government of Bombay;

And Whereas the said .....,while acting or purporting to act in the discharge of his duties as .....
.....
.....committed (here mention the offence) in respect of .....
....

this para to be added where necessary

And Whereas the said .....while acting in the capacity of the .....wilfully and with intent to defraud .....(here mention the act committed which constitutes offence).

And Whereas it appears to the Governor of Bombay that the said .....has thereby committed an offence (or offences) punishable under sections .....of the Indian Penal Code, 1860 (XLV of 1860);

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 197 of the Code of Criminal Procedure 1898 (V of 1898), the Governor of Bombay is pleased to accord sanction for the prosecution of the said .....

said .....for the said offence (or offences).

by order of the Governor of
Bombay,

Secretary to Government.

BKS. 5/6/ 40.

New Form Circulated Under Circular No. 29408/A

Dt. 28-12-54.

Form No.II (Sanction under section 6(b) of the Prevention of ~~Emrpar~~ Corruption Act, 1947).

Prosecution.

Mr.....

.....of.....,Taluka.....

.....District.....

GOVERNMENT OF BOMBAY,
Department,
Resolution No,.....
Bombay Castle, 1949.

[Letter from the Collector of .....No.....
.....dated .....19]

RESOLUTION:- Whereas in the year .....Mr.....
.....held the office of .....of.....
.....in the .....Taluka of
the .....District and as such was a public servant, not removable from his office save by or with the sanction of the Government of Bombay ;

And Whereas, on or about ....., the said....
.....while acting or purporting to act in the discharge of his official duties is alleged to have accepted for himself from Mr. .....Rs.....as illegal gratification, other than legal remuneration, as a motive or reward for .....

And Whereas it appears to the Government of Bombay that the said .....has thereby committed an offence punishable under section 161 of the Indian Penal Code, 1860 (XLV of 1860);

Now, therefore, in exercise of the powers conferred by sub-section (b) of section 6 of the Prevention of Corruption Act (II of 1947), the Government of Bombay is pleased to grant sanction for the prosecution of the said .....for the said offence.

By order of the Governor of Bombay,

Secretary to Government.

BKS. 5/6/ 4c.

Form No. III (Sanction under section 6(c) of the Prevention of Corruption Act, 1947).

Prosecution.

Mr.....

ORDER.

Whereas in ....Mr..... held the post of .....at.....and as such was a public servant removable from his office by ....

*Here insert the correct designation of the officer.

And Whereas, on or about .....,the said Mr.....is alleged to have accepted for himself from one Mr..... Rs.....as illegal gratification, other than legal remuneration, as a motive or reward for .....

Do - And Whereas it appears to the ..... that the said Mr..... has thereby committed an offence publishable under section 161 of the Indian Penal Code, 1860.

Now, therefore, in exercise of the powers conferred by clause (c) of section 6 of the Prevention of Corruption Act, 1947 (II of 1947), the ..... grants sanction for the prosecution of the said ....for the said offence.

Insert here the same designation as above.

BKS. 5/6/ 4c.

It appears from the papers that the charge-sheet originally submitted on 24-4-1945 was in respect of offences under sections 213,202 and 225A I.P.C. The Magistrate had also taken cognizance. The High Court had really no jurisdiction to quash the proceedings in respect of the offence under section 213. It is, however, difficult to follow the effect of the High Court judgment; but the general impression left by that judgment is that the entire proceedings were quashed and not proceedings only in respect of offences under sections 202 and 225A I.P.C. That seems to be the understanding also of the District Magistrate who speaks of launching a fresh prosecution.

2. In my opinion no case is made out for the offences under sections 202 and 225A. Section 202 requires that the person must be legally bound to give information respecting the offence. A person is said to be legally bound to do whatever it is illegal in him to omit; and the word "illegal" is applicable to every thing which is an offence or which is prohibited by law or which furnishes ground for a civil action: Section 43 of the Indian Penal Code. There is no statutory requirement which would have compelled the Police Patil to give information of the offences under sections 451 and 354 in this case. It is now ascertained that no direction is given in this behalf under section 41(1)(f) of the Code of Criminal Procedure. Section 10 of the Bombay Village Police Act, 1867, to which the District Magistrate refers, provides that if a crime shall have been committed, within the limits of the village, and the perpetrator of the crime has escaped or is not known, the Police Patil shall forward immediate information etc. In this particular

ase, the perpetrator had not escaped and was known
o every one including the complainant. It cannot,
herefore, be maintained that section 10 laid
a duty upon the Police Patil to give information
f the offences in this case. The result, therefore,
s that an offence under section 202 cannot be attri-
uted to the Police Patil. Section 225A is really
ot attracted being the residuary section. The
ppropriate section to apply would be section 221.
s the applicability of that section would again
epend upon the consideration whether the offences
an be treated as serious offences within the meaning
f section 12 of the Bombay Village Police Act, 1867,
the Police Patil can reasonably take the defence
that this was a sort of an ordinary quarrel,
and the trespass was not a serious offence within
the meaning of section 12. It seems that section
12 is intended for graver offences like dacoities
or murders. However that may be, there is no
reasonable prospect of the case for the offences
under section 221, 225A or 202 succeeding against
the Patil. The question of giving sanction for
these offences does not, therefore, arise especia-
lly as the Patil in any event is to be prosecuted
for accepting illegal gratification.

3. As regards the offence of receiving gratification, it is not correct to refer that act to section 213. That section is ordinarily not intended to apply to public servants. The acceptance of gratification by the Police Patil with a view to screening the offender would fall within section 161 of the Indian Penal Code. Although sanction under section 197 of the Code of Criminal Procedure for the offence under section 161 may not be necessary, since a fresh prosecution is being launched and the Magistrate will now take cognisance afresh, sanction under section 6(b) of

the Prevention of Corruption Act would be necessary. The appropriate draft sanction is appended herewith.

Sd/-P.M.L.
29/10
Remembrancer of Legal Affairs.

U.R. to R.D.No. 12165, dated the 31st October 1949

BKS. 5/6/ 4c.

53 to 55

Office of the R.L.A.

The District Magistrate, Dharwar, proposes to prosecute the Police Patil of Kalagond for offences falling under section 213 (taking gift etc. to screen an offender from punishment), section 392 (robbery), section 384 (extortion), section 176 (omission to give information by a person legally bound) and section 161 (accepting illegal gratification). Section 213 is applicable to a person accepting gratification who is not a public servant. No sanction either under section 197 of the Criminal Procedure Code or under section 6 of the ~~Criminal Procedure~~ Prevention of Corruption Act is necessary for the trial of offences under sections 392 and 384. It would not be feasible to prosecute the Police Patil for an offence falling under section 176 as under the law he is not legally bound to give information regarding the offence which was brought to his notice. With regard to the 'chowka' which the Police Patil had taken from one Gourawwa and which he returned to her after he was paid Rs. 3 as hush money for not taking the said Gourawwa to the Police Station, the facts would constitute an offence of extortion since it was not competent to the Police Patil to arrest or send to the Police Station a married woman who was in illicit connection with somebody else. The accused may therefore be prosecuted for extortion for which no sanction is necessary.

No sanction under section 197 of the Criminal Procedure Code is necessary for prosecuting a public servant for an offence falling under section 161. Under the circumstances, sanction under section 6(b) of the Prevention of Corruption Act, which alone is necessary in this case, is appended herewith. There are two independent cases and the relevant sanction should be produced in each case.

The R.D. may verify the quantity of rice in the second charge.

Sd/-P.M.L 18/11
Remembrancer of Legal Affairs.

BKS. 5/6/ U.R. to R.D.No. 13233 dated the 21st November 1949.

~~57 to~~ 59

Office of the
Commissioner of Labour & President,
Bombay Smoke Nuisances Commission.

SANCTION.

Here state the approximate date.

WHEREAS on or about .....* .....

Here describe the acts of commission or omission alleged against the offender which constitute the offence or offences.

Mr.. . . . . .

is alleged to have . . . . . ;

AND WHEREAS it appears to the President, of the
me , Member

Bombay Smoke Nuisances Commission that the said

Mr.....has thereby committed an offence/ offences against the provisions of the Bombay Smoke-nuisances Act, 1912 (Bom. VII of 1912)

Here mention the section or sections under which the offence is committed.

namely . . . . . ;

NOW, therefore, in exercise of the powers conferred on him by section 12(a) read with section 12-A of the
me

Bombay Smoke-nuisances Act, 1912, the President
I, Member

of the Bombay Smoke-nuisances Commission, hereby

sanctions the prosecution of the said Mr.....
I sanction

.....for the said offence / offences.

Dated.....

President,
Member

Bombay Smoke Nuisances Commission.

BNS. 5/6/ 40.

Office of the R.L.A.

A revised draft of the Sanction Order is appended herewith. Reference to the Report of the Inspector of Steam Boilers and Smoke Nuisances has been omitted from the draft.

Sd/- P.N.L.
11/11
Remembrancer of Legal Affairs.

U.R. to Labour Deptt. No. 12763 dated the 12th November 1949.

BK3. 5/6/ 4c.

No. 14846
Office of the
Remembrancer of Legal Affairs,
Bombay Castle, 21st December 1949.

Attention of the Departments is invited to R.L.A.'s Circular No. 9263, dated the 16th August 1949 whereunder three model fx forms of sanction under section 197 of the Criminal Procedure Code, 1898, and sections 6(b) and 6(c) of the Prevention of Corruption Act, 1947 have been forwarded to the Departments with a request to use them whenever occasion arises. In Forms Nos. I and II letter from the Collector is cited in the preamble of the Resolution. It is now considered that a reference to the letter from the Collector in the preamble is inexpedient for several reasons. Departments are therefore advised that in future ~~thexfollowingx~~ no reference should be made to the letter from the Collector in the sanction orders. The model forms supplied by this office may be used subject to this modification.

P. M. LAD
Remembrancer of Legal Affairs.

To

All Departments of the Secretariat (except the Separate Department),

All heads of Departments in the Province.

BKS. 5/6/ 4c.

Office of the R.L.A.

I have no special remarks to offer, excepting to say that I am not in favour of the proposal contained in paragraph 5 of the Committee's Report. With all these amendments, the only safeguard now left to a public servant against a malicious or vexatious prosecution is that of a prior scrutiny by a First Class Magistrate before proceedings are commenced against him. My experience of the examination of corruption cases for purposes of filing appeals against acquittals shows that prosecutions are not always commenced with due circumspection; and the Police are anxious to show results without caring for the reputations they may ruin. In a few cases strictures have also been passed about their over-enthusiasm. In these circumstances, it may not be quite safe to dispense with the Magistrate's scrutiny and to give a free hand to the Police. Cases where there is a serious risk of valuable evidence being lost would be very few indeed; but that would always be made a pretext for not applying to the Magistrate.

I agree that the draft letter which I have sent about dispensing with sanction may be brought to the notice of the Government of India in the manner suggested by the Home Department.

Sd/-P.M.L.
14/11
Remembrancer of Legal Affairs.

Secy . H.D.

BKS. 5/6/ 40.